COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

17-P-1431

COMMONWEALTH

vs.

CHRISTOPHER JACKSON.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Following a jury trial in the Superior Court, the defendant, Christopher Jackson, was convicted of murder in the second degree, unlawful possession of ammunition, unlawful possession of a firearm, and unlawful possession of a loaded firearm. On appeal, he contends that (1) the judge erred in denying his motions to suppress evidence and statements; (2) the judge erred in allowing hearsay statements of the decedent in evidence; (3) the judge erred in admitting autopsy photographs in evidence; and (4) the prosecutor's closing argument created a substantial risk of a miscarriage of justice. We affirm.

Background. On the evening of February 19, 2012, the twenty-five year old victim and her boyfriend were parked in the boyfriend's car in front of the boyfriend's home in Mattapan. A person dressed in black, later identified as the defendant,

approached the car and shot the victim in the head and arm. The defendant fled toward a nearby cemetery. The victim died from the gunshot to the head.

During the subsequent search of the cemetery, police officers, using a canine unit, found two bags, one of which contained the murder weapon. However, the murder remained unsolved.

Approximately one year later, following a television news segment about the murder, the victim's stepmother contacted detectives working on the case, and suggested that they speak to "Chris" who had a longstanding relationship with the victim. The detectives learned that "Chris" was the defendant. On February 13, 2013, the detectives conducted a videotaped interview of the defendant at Boston Police headquarters, during which the defendant consented to provide a deoxyribonucleic acid (DNA) sample through a buccal swab from his cheek. Testing revealed that the defendant's DNA was present on some of the items retrieved from the cemetery after the shooting. On April 5, 2013, during another videotaped interview, after the police administered Miranda warnings to the defendant, he admitted to killing the victim.[1] The detectives obtained a search warrant for the defendant's home through which they found two

[1] Both videotaped interviews were admitted as exhibits at the hearing on the defendant's motions to suppress, and at trial were admitted (along with transcripts) and played for the jury.

composition notebooks under his bed. One of the notebooks contained poetry, written by the defendant, much of which centered on the victim and the defendant's professed love for her.

Prior to trial, the defendant moved to suppress both the DNA sample he provided on February 13, 2013 and the statements he made to the police on April 5, 2013. A judge denied both motions after a hearing. At trial, the defense conceded that the defendant had committed the murder, but challenged his ability to premeditate, based upon mental impairment. The defense succeeded as the jury, on the indictment for murder in the first degree, returned the lesser verdict of murder in the second degree.

Discussion. 1. Motions to suppress. The defendant claims that the statements made during his post-Miranda questioning on April 5, 2013, were not knowing and voluntary. He further argues that the judge failed to take into account evidence of the defendant's "manifest history of suffering from various mental conditions." We need not dwell long on this claim. The judge's findings reflect comprehensive and thoughtful consideration and analysis of the defendant's voluntary and knowing waiver of his Miranda rights under the totality of the circumstances. See Commonwealth v. Gallett, 481 Mass. 662, 668 (2019) ("we consider factors such as 'promises or other

inducements, conduct of the defendant, the defendant's age, education, intelligence and emotional stability, experience with and in the criminal justice system, physical and mental condition . . . and the details of the interrogation, including the recitation of Miranda warnings'" [citation omitted]); Commonwealth v. Tremblay, 480 Mass. 645, 656 (2018). Contrary to the defendant's argument, the judge did take into account the defendant's mental conditions. The judge's decision denying the motion to suppress references the defendant's mental health history, limitations, educational history, and intellectual capability. Indeed, the first section of the judge's findings of fact is entitled, "Defendant's Medical and Mental Health Challenges," and delineates specific medical and mental health issues and challenges faced by the defendant over the years, as well as evidence and analysis concerning the defendant's ability to understand and retain information. The judge further applied the law to these facts, and concluded that the detectives did not overbear the defendant's will, and that the defendant's waiver -- examined in light of his mental health history and impairment -- was knowing, intelligent, and voluntary. See Gallett, 481 Mass. at 669, quoting Commonwealth v. Daniels, 366 Mass. 601, 607 (1975) ("evidence of cognitive limitations 'does not compel a determination as matter of law' that the defendant did not 'knowingly and willingly waive his Miranda rights and

make a voluntary confession'"); Commonwealth v. Boyarsky, 452 Mass. 700, 715 (2008). There was no error.

There is likewise no merit to the defendant's claim that the evidence did not establish that the defendant voluntarily consented to undergo the swab procedure for the DNA sample. As the judge found, the defendant "came to the police department on his own and was free to leave if he wished. He was not a suspect in [the victim's] homicide, nor was he in custody, at the time of the [initial] interview." Furthermore, the detective's questions to the defendant "made clear that it was up to the defendant to decide whether to provide a buccal swab." The judge's findings were supported by the evidence, and we discern no error therein. See Commonwealth v. Gray, 465 Mass. 330, 343 (2013) (voluntariness of consent is question of fact determined from totality of circumstances, and will not be reversed absent clear error).

2. Excited utterances. The defendant next claims that the judge erred in admitting evidence of out-of-court statements of the victim as excited utterances.[2] The argument is unavailing.

[2] The defendant challenges admission of testimony from the victim's mother that the victim yelled into a telephone, "It's not going to happen, get it through your skull. It's not going to happen. I don't want you." The defendant further challenges the victim's mother's testimony that she took the telephone from the victim and told the defendant that the victim was "not the one for you, and just, you know, move on," to which the defendant responded, "[I]f I can't have her nobody can."

The judge conducted more than one voir dire on this issue, through which he could glean that the victim's statements were made under the stress of a startling occurrence or event and were not the product of reflective thought. See Mass. G. Evid. § 803(2) (2018). See also Commonwealth v. Linton, 456 Mass. 534, 548 (2010) (trial judge has broad discretion to determine whether statement admissible as excited utterance). The evidence supported the judge's discretionary determination that the victim's statements were admissible as excited utterances. See Commonwealth v. Nunes, 430 Mass. 1, 3-4 (1999).

Furthermore, the defendant's statement (see note 2, supra) that "if I can't have her nobody can" was relevant and admissible as an admission that revealed his motive for the murder. See Commonwealth v. Jackson, 384 Mass. 572, 577 (1981); Mass. G. Evid. § 801(d)(2)(A). Likewise, the mother's statement wherein she advised the defendant to "just, you know, move on" was admissible to show the context in which the defendant's responsive admission was made. See Commonwealth v. Serrano-Ortiz, 53 Mass. App. Ct. 608, 614 (2002); Commonwealth v. Ward, 45 Mass. App. Ct. 901, 903 (1998). Thus, there was no error.

Even assuming, arguendo, that the statements were erroneously admitted, there was no appreciable prejudice in view of the overwhelming evidence of guilt, including but not limited to the DNA evidence, the defendant's admission to committing the

murder, and other admissible evidence showing the defendant's motive to commit the crime. Moreover, where the jury found the defendant guilty of murder only in the second degree, as argued by defense counsel,[3] any improper admission of the aforementioned motive evidence was not prejudicial. See Commonwealth v. Knight, 37 Mass. App. Ct. 92, 105 (1994) (no prejudice where defense strategy succeeded at trial).

3. Autopsy photographs. There is no merit to the claim that the admission of autopsy photos was unfairly prejudicial. The photographs were neither unduly graphic nor inflammatory.[4] Moreover, the photographs were admissible to corroborate other evidence introduced by the Commonwealth and to prove the Commonwealth's case. The Supreme Judicial Court "has almost never ruled that it was error to admit photographs of crime scenes and homicide victims." Commonwealth v. DeSouza, 428 Mass. 667, 670 (1999). "The fact that a photograph is cumulative of other evidence has not required the exclusion of the photograph." Id. See Commonwealth v. Nadworny, 396 Mass. 342, 366-367 (1985), cert. denied, 477 U.S. 904 (1986). Finally, the judge's clear and contemporaneous limiting

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[3] In closing argument, defense counsel contended, in relevant part, "We never said [the defendant] didn't intend to kill [the victim]. We never said he isn't guilty of second degree murder. . . . The Commonwealth has proven murder but not first degree."

[4] The panel hearing this appeal has reviewed the photographic exhibits transmitted to this court.

instruction negated any risk of prejudice to the defendant.[5] The judge did not abuse his discretion in admitting the photographs into evidence. See Commonwealth v. Amran, 471 Mass. 354, 358 (2015).

4. Closing argument. Finally, the defendant argues that the prosecutor's suggestion to the jury in closing, that the defendant's "anger and perhaps his narcissism" drove him to kill the victim, created a substantial risk of a miscarriage of justice. More specifically, the defendant contends that "narcissism" is a psychiatric condition; that the prosecutor could not introduce evidence of narcissism as a motive for the murder without expert testimony; that there was no such expert testimony here; and that thus the prosecutor erred in using that term in closing argument. We disagree. Even assuming, arguendo, that the prosecutor should not have used the word "narcissism," the single reference in an otherwise fair and appropriate closing argument did not prejudice the defense. See Commonwealth v. Morales, 440 Mass. 536, 550 (2003) ("we review the closing argument as a whole"). Furthermore, as discussed above, we have no doubt that this claimed error had no impact on the jury's verdict, in view of the overwhelming evidence at

[5] The defendant did not object to the limiting instruction at trial.

trial, the judge's clear instructions, and the success of the defense strategy at trial.

Judgments affirmed.

By the Court (Milkey, Neyman & Englander, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: July 1, 2019.

[6] The panelists are listed in order of seniority.